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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/583,956	02/14/2008	Peter Larsson	JRL-2380-1302	1519
23117 7590 05/04/2011 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203				
EXAMINER				
KENDALL, CHUCK O				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/583,956

**Applicant(s)**

LARSSON ET AL.

**Examiner**

CHUCK O. KENDALL

**Art Unit**

2192

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 January 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11, 13-26 and 28 - 30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, 13-26 and 28 - 30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-945)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **Supplemental Action**

1. This is in response to Application filed 01/13/11.
2. Claims 1 – 11, 13 – 26 and 28 – 30 have been examined.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

4. Claims 1, 5 – 6, 16, 20 – 21 are rejected under 35 U.S.C. 102(e) as being anticipated by USPN Averbuch 5,896,566.

Regarding claims 1 and 16, a method for providing a communication device with radio software from a software download server via a wireless network wirelessly over the air including a number of access networks, said

communication device being arranged to operate in said wireless network and comprising a transceiver for receiving said radio at least first and second two radio access technologies for communication with corresponding access networks of said wireless network, comprising the steps of:

initiating a download of radio software designed for the first radio access technology of said communication devices (2:10 – 23 also see 6:35 – 60, for wireless transceiver and receiving updated software and download);

selecting an available one of the first and second radio access technology of said communication device for downloading said software (2:30 – 35 also see 6:35 – 60, for wireless transceiver and receiving updated software and download);

downloading said radio software via the available radio access technology wirelessly over the air and Storing the downloaded radio software designed for the first radio access technology in a memory (2:10 – 35 also see 6:35 – 60, for wireless transceiver and receiving updated software and download).

Regarding claims 5 and 20, method according to claim 1, wherein the radio software designed for the first radio access technology is stored in a memory space allocated for said first radio access technology (3:25 – 40).

Regarding claims 6 and 21, method according to claim 1, further comprising the step of, at completion of the downloading of the radio software of the first radio access technology, verifying that the downloaded software is operational (5:50 – 55, see acknowledgment).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 7 - 11, 13 - 15, 22 - 26 and 28 - 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN Averbuch 5,896,566 in view of Coppinger 20050064857.

Regarding claims 7 and 22, Averbuch doesn't explicitly disclose a method according to claim 6, wherein the step of verifying comprises the step of performing local test procedure in said communication device. Coopinger in an analogous art and similar configuration discloses wherein

verification tests are performed on software. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Averbuch and Coppinger because it would enable verifying the software.

Regarding claims 8 and 23, method according to claim 7, wherein the step of performing a test procedure comprises the steps of performing a cyclic redundancy check of the downloaded software;

performing a built-in self-test of the software configured hardware logic of the communication device [0069]; and performing a loop-test of the downloaded software [0069, Coppinger].

Regarding claims 9 and 24, method according to claim 6, wherein the step of verifying comprises the step of if said local test procedure was successful, performing a confirming procedure [0067, see validate].

Regarding claims 10 and 25, method according to claim 9, wherein the step of verifying comprises the step of if said local test procedure not was successful, performing an error handling procedure [0067, see validate].

Regarding claim 11 and 26, method according to claim 9, wherein the step of performing a confirming procedure comprises the steps of:

    sending a test message via said first radio technology to said server[0067];

    if a confirmation message has been received via said first radio technology within a predetermined period of time, determining that the downloading of software was successful[0067]; and

    if a confirmation message not has been received via said first radio technology within a predetermined period of time, performing an error handling procedure [0067].

12. (canceled)

Regarding claims 13 and 28, method according to claim 1, wherein the step of initiating a download of radio software comprises the steps of:

    polling said communication device about the current version of software of a radio access technology of said communication device (FIG.5 and all associated text);

    checking whether said version of software is up to date with the current version of corresponding software available on said server; and if said version of software is not up to date, starting download procedure

according to any one of preceding claims (Averbuch, FIG.5 and all associated text).

Regarding claims 14 and 29, method according to claim 1, wherein said communication device comprises initiating means for initiating a download of radio software of a radio access technology, and wherein the step of initiating a download of radio software comprises the steps of:

    sending an indication message comprising information regarding the current version of software of a radio access technology of said communication device from said communication device to said server via said wireless network (4:40 – 50);

    checking whether said version of software is up to date with the current version of corresponding software available on said server; and if said current version of software is not up to date, starting a download procedure according to claim 1(4:40 – 50).

Regarding claims 15 and 30, method according to claim 1, wherein the step of initiating a download of radio software comprises the steps of:

    at connection of said communication device to an access network, sending an inquiry message from said access network to said server via said



network in order to check whether a new version of the software of the radio access technology of said communication device corresponding to said access network is available(4:40 – 50);

checking whether said version of software is up to date with the current version of corresponding software available on said server(4:40 – 50); and

if said current version of software is not up to date, starting a download procedure according to claim 1(4:40 – 50).

27. (canceled)

### ***Response to Arguments***

Applicant's arguments with respect to claims 1 – 11, 13 – 26 and 28 – 30 have been considered but are moot in view of the new ground(s) of rejection.

Regarding Applicant's comment that Averbuch is not particularly relevant to the claimed technology that while the indication that a software update is available is communicated over the radio interface, the actual

downloading of the software to the mobile unit takes place by way of a battery charger/software downloader 108. This software download occurs over wires rather than the air interface.

Examiner disagrees, in (2:10 – 23), Prior art discloses utilizing a wireless interface contrary to Applicants argument, an exact recitation from the prior art reads, ", a portable wireless communication unit sends a software update response back to the server. In one embodiment, the software update query is sent when it is determined that the portable wireless communication unit has outdated software. A software update acknowledgment, sent to the portable wireless communication unit by the server in response to the software update response, causes the portable wireless communication unit to internally set a flag indicating the availability of the updated software..."

As noted even though the device uses the battery structure to perform the physical download, the software is first transmitted to the device wirelessly from the server and upon determining its availability it then performs the download utilizing the device. As recited in Applicants limitations the download is initiated wireless, just as is performed in the prior art. And Applicants art doesn't preclude or exclude being able to perform the downloading after it has been transmitted to the battery charger apparatus to perform further downloading.

### Correspondence Information

9.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chuck Kendall whose telephone number

is 571-272-3698. The examiner can normally be reached between Monday and Thursday, at 11:00 am - 4:300pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Dam can be reached on 571-272-3695. The fax phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Chuck O Kendall/

Primary Examiner, Art Unit 2192